EXHIBIT 1

INTRODUCTION

Respondent Edwin Jacinto (Respondent) was an unsuccessful candidate for a City of Lynwood City Council seat in the November 3, 2009, election. As a candidate for city office, Respondent was required to file periodic campaign statements under the Political Reform Act (the "Act").[1]

This matter arose out of a Campaign Disclosure Statements Non-Filer Referral sent to the Fair Political Practices Commission's Enforcement Division (Enforcement Division) by the City of Lynwood City Clerk (CLCC), for Respondent's failure to file campaign statements as a candidate for a City of Lynwood City Council seat on the November 3, 2009, election. The subsequent investigation by the Enforcement Division revealed that Respondent failed to file four campaign statements required by the Act. Specifically, Respondent failed to file two pre-election campaign statements and two semi-annual campaign statements.

For the purposes of this Default Decision and Order, Respondent's violations of the Act are stated as follows:

COUNT 1: As a candidate for a Lynwood City Council seat in the November 3, 2009, election, Respondent Edwin Jacinto had a duty to file, with the City of Lynwood City Clerk, a pre-election campaign statement for the July 1, 2009, through September 19, 2009, reporting period on or before September 24, 2009. By failing to file the pre-election campaign statement by September 24, 2009, Respondent Edward Jacinto violated Sections 84200.5, subdivision (c), and 84200.8, subdivision (a).

COUNT 2: As a candidate for a Lynwood City Council seat in the November 3, 2009, election, Respondent Edwin Jacinto had a duty to file, with the City of Lynwood City Clerk, a pre-election campaign statement for the September 20, 2009, through October 17, 2009, reporting period on or before October 22, 2009. By failing to file the pre-election campaign statement by October 22, 2009, Respondent Edward Jacinto violated Sections 84200.5, subdivision (c), and 84200.8, subdivision (b).

COUNT 3: As a candidate for a Lynwood City council seat in the November 3, 2009, election, Respondent Edwin Jacinto had a duty to file, with the City of Lynwood City Clerk, a semi-annual campaign statement for the October 18, 2009, through December 31, 2009,

[1] The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

reporting period on or before February 1, 2010. By failing to file the semi-annual campaign statement by February 1, 2010, Respondent Edwin Jacinto violated Section 84200, subdivision (a).

COUNT 4: As a candidate for a Lynwood City council seat in the November 3, 2009, election, Respondent Edwin Jacinto had a duty to file, with the City of Lynwood City Clerk, a semi-annual campaign statement for the January 1, 2010, through June 30, 2010, reporting period on or before August 2, 2010. By failing to file the semi-annual campaign statement by August 2, 2010, Respondent Edwin Jacinto violated Section 84200, subdivision (a).

DEFAULT PROCEEDINGS UNDER THE ADMINISTRATIVE PROCEDURE ACT

When the Fair Political Practice Commission (Commission) determines that there is probable cause for believing that the Act has been violated, it may hold a hearing to determine if a violation has occurred. (Section 83116.) Notice of the hearing, and the hearing itself, must be conducted in accordance with the Administrative Procedure Act (APA).[2] (Section 83116.) A hearing to determine whether the Act has been violated is initiated by the filing of an accusation, which shall be a concise written statement of the charges specifying the statutes and rules which the respondent is alleged to have violated. (Section 11503.)

Included among the rights afforded a respondent under the APA, is the right to file the Notice of Defense with the Commission within 15 days after service of the accusation, by which the respondent may (1) request a hearing, (2) object to the accusation's form or substance or to the adverse effects of complying with the accusation, (3) admit the accusation in whole or in part, or (4) present new matter by way of a defense. (Section 11506, subd. (a)(1)-(6).)

The APA provides that a respondent's failure to file a Notice of Defense within 15 days after service of an accusation constitutes a waiver of the respondent's right to a hearing. (Section 11506, subd. (c).) Moreover, when a respondent fails to file a Notice of Defense, the Commission may take action based on the respondent's express admissions or upon other evidence, and affidavits may be used as evidence without any notice to the respondent. (Section 11520, subd. (a).)

PROCEDURAL REQUIREMENTS AND HISTORY

A. Initiation of the Administrative Action

Section 91000.5 provides that "[t]he service of the probable cause hearing notice, as required by Section 83115.5, upon the person alleged to have violated this title shall constitute the commencement of the administrative action." (Section 91000.5, subd. (a).)

[2] The California Administrative Procedure Act, which governs administrative adjudications, is contained in Sections 11370 through 11529 of the Government Code.

Section 83115.5 prohibits a finding of probable cause by the Commission unless the person alleged to have violated the Act is 1) notified of the violation by service of process or registered mail with return receipt requested; 2) provided with a summary of the evidence; and 3) informed of his right to be present in person and represented by counsel at any proceeding of the Commission held for the purpose of considering whether probable cause exists for believing the person violated the Act. Additionally, Section 83115.5 states that the required notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or if the registered mail receipt is not signed, the date returned by the post office.

Section 91000.5 provides that no administrative action pursuant to Chapter 3 of the Act, alleging a violation of any of the provisions of Act, shall be commenced more than five years after the date on which the violation occurred.

Documents supporting the procedural history are included in the attached Certification of Records ("Certification") filed herewith at Exhibit A, A-1 through A-8, and incorporated herein by reference.

In accordance with Sections 83115.5 and 91000.5, the Enforcement Division initiated the administrative action against Respondent in this matter by serving him with a Report in Support of a Finding of Probable Cause (Report) dated February 4, 2011. (Certification, Exhibit A-1.) Respondent was served by certified mail, return receipt requested.[3] The original return receipt addressed to Respondent was signed on February 10, 2011, and was returned to the Enforcement Division. (Certification, Exhibit A-2.) Therefore, the administrative action commenced on February 10, 2011, the date the registered mail receipt was signed, and the five year statute of limitations was effectively tolled on this date.

As required by Section 83115.5, the packet served on Respondent contained a cover letter, dated February 7, 2011, and a memorandum describing Probable Cause Proceedings, advising that Respondent had 21 days in which to request a probable cause conference and/or to file a written response to the Report. (Certification, Exhibit A-3.) Respondent neither requested a probable cause conference nor submitted a written response to the Report.

B. <u>Ex Parte Request for a Finding of Probable Cause</u>

Since Respondent failed to request a probable cause conference or submit a written response to the Report by the statutory deadline, the Enforcement Division submitted an Ex Parte Request for a Finding of Probable Cause and an Order that an Accusation be Prepared and Served to Executive Director Roman G. Porter on March 4, 2011. (Certification, Exhibit A-4.) Respondent was sent copies of these documents. (Certification, Exhibit A-5.)

On March 9, 2011, Executive Director Roman G. Porter issued a Finding of Probable Cause and Order to Prepare and Serve an Accusation. (Certification, Exhibit A-6.)

[3] Where any communication is required by law to be mailed by registered mail to or by the state, or any officer or agency thereof, the mailing of such communication by certified mail is sufficient compliance with the requirements of the law. (Section 8311.)

C. The Issuance and Service of the Accusation

Under the Act, if the Executive Director makes a finding of probable cause, he or she shall prepare an accusation pursuant to Section 11503 of the APA, and have it served on the persons who are the subject of the probable cause finding. (Regulation 18361.4, subd. (e).)

Section 11503 states:

> A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

Section 11505, subdivision (a) requires that, upon the filing of the accusation, the agency shall 1) serve a copy thereof on the respondent as provided in Section 11505, subdivision (c); 2) include a post card or other form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under Section 11506; 3) include (i) a statement that respondent may request a hearing by filing a notice of defense as provided in Section 11506 within 15 days after service upon the respondent of the accusation, and that failure to do so will constitute a waiver of the respondent's right to a hearing, and (ii) copies of Sections 11507.5, 11507.6, and 11507.7.

Section 11505, subdivision (b) set forth the language required in the accompanying statement to the respondent.

Section 11505, subdivision (c) provides that the Accusation and accompanying information may be sent to the respondent by any means selected by the agency, but that no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent has been served personally or by registered mail as set forth in Section 11505.

On March 9, 2011, the Commission's Executive Director, Roman G. Porter, issued an Accusation against Respondent in this matter. In accordance with Section 11505, the Accusation and accompanying information, consisting of a Statement to Respondent, two copies of a Notice of Defense Form, copies of Government Code Sections 11506, 11507.5, 11507.6 and 11507.7, and a cover letter dated March 10, 2011, were personally served on Respondent on March 21, 2011. (Certification, Exhibit A-7.)

Along with the Accusation, the Enforcement Division served Respondent with a "Statement to Respondent" which notified them that they could request a hearing on the merits and warned that, unless a Notice of Defense was filed within 15 days of service of the Accusation, they would be deemed to have waived the right to a hearing. Respondent did not file a Notice of Defense within the statutory time period, which ended on April 5, 2011.

As a result, on May 20, 2011, Commission Counsel Milad Dalju sent a letter to Respondent advising him that this matter would be submitted for a Default Decision and Order at the Commission's public meeting scheduled for June 9, 2011. A copy of the Default Decision and Order, and this accompanying Exhibit 1 with attachments, was included with the letter. (Certification, Exhibit A-8.)

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that the contributions and expenditures affecting election campaigns are fully and truthfully disclosed to the public, so that voters may be better informed, and improper practices may be inhibited. The Act therefore establishes a comprehensive campaign reporting system designed to accomplish this purpose of disclosure.

The following reflects the Act as it was in effect at the time of the relevant violations.

Duty to File Campaign Statements and Reports

The Act requires candidates to file campaign statements at specific times disclosing information regarding contributions received and expenditures made by the campaign. A candidate includes, in relevant part, and individual who is listed on the ballot for election to any elective office. (Section 82001.)

Candidates for city office must file the original and one copy of all required campaign statements with the clerk of the city in which they are running for office. (Section 84215, subd. (e).)

Duty to File Pre-Election Campaign Statements

Candidates are required to file two pre-election campaign statements before an election. (Section 84200.5.)

For all candidates being voted upon on a date other than the first Tuesday after the first Monday in June or November of an even-numbered year, one pre-election campaign statement for the reporting period ending 45 days before the election must be filed no later than 40 days before the election.[4] (Sections 84200.5, subd. (c), 84200.8, subd. (a).) Subsequently, another

[4] Under Regulation 18116, whenever the Act requires that a statement or report (other than late contribution reports required by Section 84203, late independent expenditure reports required by Section 84204, or notice by the contributor of a late in-kind contribution required by Section 84203.3) be filed prior to or not later than

pre-election campaign statement for the reporting period ending 17 days before the election must be filed no later than 12 days before the election. (Sections 84200.5, subd. (c), 84200.8, subd. (b).)

Duty to File Semi-Annual Campaign Statements

Candidates are required to file semi-annual campaign statements each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31. (Section 84200, subd. (a).) All filing obligations continue until the campaign is terminated by filing a statement of termination (Form 410) with the Secretary of State and a copy with the local filing officer receiving the campaign's original campaign statements. (Section 84214; Regulation 18404.)

SUMMARY OF THE FACTS

Unless otherwise indicated, documents supporting the following summary of evidence are included in the attached Certification of Records filed herewith at Exhibit A, A–9 through A–12, and incorporated herein by reference.

Respondent was an unsuccessful candidate for a City of Lynwood City Council seat in the November 3, 2009, election, and failed to file with the City of Lynwood City Clerk (CLCC) pre-election campaign statements for the July 1, 2009, through September 19, 2009, reporting period on or before September 24, 2009, and the September 20, 2009, through October 17, 2009, reporting period on or before October 22, 2009. Respondent also failed to file with the CLCC semi-annual campaign statements for the October 18, 2009, through December 31, 2009, reporting period on or before February 1, 2010, and the January 1, 2010, through June 30, 2010, reporting period on or before August 2, 2010.

The CLCC issued Respondent written notices on November 3, 2009, November 12, 2009, and February 15, 2010, warning Respondent that he had failed to file the two pre-election and a semi-annual campaign statement on behalf of his campaign. (Certification, Exhibit A-9.)

On or about March 29, 2010, the Enforcement Division received a Campaign Disclosure Statements Non-Filer Enforcement Referral from the CLCC for Respondent's failure to file two pre-election campaign statements and a semi-annual campaign statement. (Certification, Exhibit A-10.)

On or about September 7, 2010, Adrianne Korchmaros, Political Reform Consultant with the Enforcement Division, contacted the City of Lynwood City Clerk and was informed that Respondent also failed to file a semi-annual campaign statement for the January 1, 2010, through June 30, 2010, period, on or before the August 2, 2010. (Exhibit B.)

On or about December 29, 2010, Janet Seely, Special Investigator with the Enforcement Division, sent Respondent a letter requesting that Respondent submit the four delinquent

---

a specified date or during or within a specified period, and the deadline falls on a Saturday, Sunday or official state holiday, the filing deadline for such a statement or report shall be extended to the next regular business day.

campaign statements and all records of Respondent's 2009 campaign. (Certification, Exhibit A-11.) Respondent did not respond to the request.

Accordingly, Respondent committed four violations of the Act, as follows:

Count 1

Failure to File a Pre-Election Campaign Statement

As a candidate for a Lynwood City Council seat in the November 3, 2009, election, Respondent Edwin Jacinto had a duty to file, with the City of Lynwood City Clerk, a pre-election campaign statement for the July 1, 2009, through September 19, 2009, reporting period on or before September 24, 2009. Respondent failed to file the required pre-election campaign statement. By failing to file the pre-election campaign statement by September 24, 2009, Respondent violated Sections 84200.5, subdivision (c), and 84200.8, subdivision (a).

Count 2

Failure to File a Pre-Election Campaign Statement

As a candidate for a Lynwood City Council seat in the November 3, 2009, election, Respondent Edwin Jacinto had a duty to file, with the City of Lynwood City Clerk, a pre-election campaign statement for the September 20, 2009, through October 17, 2009, reporting period on or before October 22, 2009. Respondent failed to file the required pre-election campaign statement. By failing to file the pre-election campaign statement by September 24, 2009, Respondent violated Sections 84200.5, subdivision (c), and 84200.8, subdivision (b).

Count 3

Failure to File a Semi-Annual Campaign Statement

As a candidate for a Lynwood City council seat in the November 3, 2009, election, Respondent Edwin Jacinto had a duty to file, with the City of Lynwood City Clerk, a semi-annual campaign statement for the October 18, 2009, through December 31, 2009, reporting period on or before February 1, 2010. Respondent failed to file the required semi-annual campaign statement. By failing to file the semi-annual campaign statement by August 2, 2010, Respondent violated Section 84200, subdivision (a).

Count 4

Failure to File a Semi-Annual Campaign Statement

As a candidate for a Lynwood City council seat in the November 3, 2009, election, Respondent Edwin Jacinto had a duty to file, with the City of Lynwood City Clerk, a semi-annual campaign statement for the January 1, 2010, through June 30, 2010, reporting period on or before August 2, 2010. Respondent failed to file the required semi-annual campaign

statement. By failing to file the semi-annual campaign statement by August 2, 2010, Respondent violated Section 84200, subdivision (a).

CONCLUSION

This matter consists of four counts of violating the Act, which carry a maximum administrative penalty of Five Thousand Dollars ($5,000) per count for a total of Twenty Thousand Dollars ($20,000).

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the respondent(s) demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the respondent voluntarily filed amendments to provide full disclosure. The facts are required to be considered by the Commission under Regulation 18361.5.

The failure to file campaign statements is a serious violation of the Act because it deprives the public of important information about a candidate's contributors and financial activities. In this matter, Respondent failed to file all of the required campaign statements related to the November 3, 2009, election, two of which should have been filed prior to the election. Therefore the public was completely deprived of information regarding Respondent's contributors and financial activities.

Respondent's violations of the Act were deliberate at worst and negligent at best. Due to previous enforcement actions against Respondent, Respondent should have been aware of his duties and requirements under the Act. On April 5, 2007, the Enforcement Division sent Respondent an advisory letter advising Respondent of his duties to file campaign statements. In August of 2009 the Enforcement Division sent Respondent a warning letter in response to his failure to timely file campaign statements for his 2005 campaign for a Lynwood City Council seat.

Additionally, Respondent did not demonstrate good faith in consulting with the Commission staff. Respondent failed to respond to multiple attempts by the Enforcement Division to contact him. Respondent has also failed to file any of the delinquent statements, even after multiple requests by the Enforcement Division.

Respondent has also demonstrated a pattern of violating the Act. Respondent failed to timely file campaign statements for his 2005 campaign for a Lynwood City Council seat, and was sent a warning letter by the FPPC for those violations in August of 2009.

The facts of this case show a pattern of violations that, taken as a whole, resulted in a complete lack of disclosure of Respondent's campaign activities during Respondent's campaign for a City of Lynwood City Council seat in the November 3, 2009, election. Respondent's

conduct shows a reckless disregard for the Act, and Respondent's violations are serious.

Regarding Counts 1 and 2, recent penalties approved by the Commission concerning violations of Section 84200.5, subdivision (c), include:

- *In the Matter of Robert L. Griffith and Committee to Elect Robert Griffith* (Default), FPPC No. 05/848. This case involved two counts for violations of Section 84200.5, subdivision (a). A penalty of Three Thousand Five Hundred Dollars ($3,500) per count was approved by the Commission on September 10, 2009, due to respondents' failure to file both of their required pre-election statement before the election, which left the public with no information regarding the committee's contributors and financial activities. Additionally, in 2004 the Enforcement Division issued a warning letter against respondent Robert L. Griffith for failing to file a semi-annual campaign statement for respondent Committee to Elect Robert Griffith.

- *In the Matter of Maria G. Lopez, Campaign to Elect Maria Lopez and Adolph J. Lopez* (Default), FPPC No. 06/379. This case involved one count for the violation of Section 84200.5, subdivision (a). A penalty of Three Thousand Dollar ($3,000) was approved by the Commission on October 8, 2009, due to respondents' failure to file a pre-election statement which deprived the public of information regarding the committee's contributors and financial activities. Respondents had no prior history of violating the Act.

Because Respondent's actions were similarly in total contravention of the goals and purposes of the campaign disclosure provisions of the Act as set forth in Section 81002, subdivision (a), imposition of an administrative penalty in the amount of Three Thousand Five Hundred ($3,500) per count for Count 1 and 2 is recommended. This is in the high range of penalties but below the maximum penalty recommended for violations of Section 85200.5, subdivision (c).

Regarding Counts 3 and 4, recent penalties approved by the Commission concerning violations of Section 84200, subdivision (a), include:

- *In the Matter of Barbara Dore and Dore for Water Board* (Default), FPPC No. 09/192. This case involved four counts for violations of Section 84200, subdivision (a). A penalty of Two Thousand Five Hundred Dollar ($2,500) per count was approved by the Commission on October 8, 2009, due to respondents' failure to file semi-annual campaign statements which deprived the public of information regarding the committee's contributors and financial activities. Respondents had no prior history of violating the Act.

- *In the Matter of Elizabeth Todd-Gallardo* (Default), FPPC No. 07/544. This case involved three counts for violations of Section 84200, subdivision (a). A penalty of Two Thousand Five Hundred Dollar ($2,500) per count was approved by the Commission on May 13, 2010, due to respondent's failure to file semi-annual campaign statements which deprived the public of information regarding the

committee's contributors and financial activities. Additionally, in 2007 the Enforcement Division issued a warning letter against respondent Elizabeth Todd-Gallardo for failing to file a semi-annual campaign statement.

Because Respondent's actions were similarly in total contravention of the goals and purposes of the campaign disclosure provisions of the Act as set forth in Section 81002, subdivision (a), imposition of an administrative penalty in the amount of Two Thousand Five Hundred Dollars ($2,500) per count for Count 3 and 4 is recommended. This is in the mid range of penalties but below the maximum penalty recommended for violations of Section 85200, subdivision (a).

After consideration of the factors of Regulation 18361.5, and consideration of penalties in prior enforcement actions, the imposition of a penalty of Twelve Thousand Dollars ($12,000) is recommended.

* * * * *